

REMARKS

Claims 1, 2, and 41 to 47 are currently pending and under examination in the application following entry of the above amendments. Claims 3-5 have previously been cancelled. Claims 6-20 have been withdrawn. In view of the following remarks, the Examiner is respectfully requested to allow Claims 1, 2 and 41-47 the only claims pending and currently under examination in this application.

Claim 1 has been amended to clarify that the sample deposition system is part of a housing. This amendment is fully supported by the specification and claims as originally filed. For instance, see paragraph 67 and FIG. 1. Accordingly, no new matter has been added.

As no new matter has been added by way of the amendment made herein its entry is respectfully requested.

Rejection of Claims 1,2 and 41-47 under 35 U.S.C. § 112, first paragraph

Claims 1, 2, and 41-47 are rejected under 35 U.S.C. 112, first paragraph, as allegedly lacking enablement. Specifically, the Office acknowledges that the device is enabled for a sample deposition system that is associated with a housing. However, the Office asserts that the device is not enabled for a sample deposition system wherein the sample deposition system is not so associated. The Applicants respectfully disagree. However, in order to expedite prosecution and advance the claims to issuance, the Applicants have amended the claims to clarify that the sample deposition system is associated with a housing. Accordingly, in view of the amendments herein the Applicants assert that the claims are in condition for allowance and

in view of the fact that there are no art based rejections thereof, the Applicants respectfully request the claims be allowed.

Rejection of Claims 1,2 and 41-47 under 35 U.S.C. § 112, second paragraph

Claims 1, 2 and 41-47 are rejected under 35 U.S.C. 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims have been amended to clarify the claim language. Consequently, this rejection has been obviated and in view of the amendments made herein the Applicants respectfully request that these claims be allowed.

Rejection of Claims 1,2 and 41-47 on the grounds of Nonstatutory Obviousness-type Double Patenting

Claims 1, 2 and 41-47 are rejected as allegedly being obvious on the grounds of nonstatutory obviousness-type double patenting over U.S. Patent No. 7,256,053 (the '053 patent). The Applicants respectfully disagree and traverse the rejection. In order to establish a *prima facie* case of obviousness the cited art must teach or suggest each element of the rejected claims. See M.P.E.P. § 2143. An element of the rejected claims is a carrier, which carrier is formed of a permeable material. The Office has not set forth where in the '053 patent this element is taught or suggested. Accordingly, as the Office has not set forth where each element is taught by the cited art, the Office has failed to establish its *prima facie* case. The Applicants therefore respectfully request that this rejection be withdrawn and the claims allowed to issue.

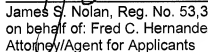
CONCLUSION

It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

On the basis of the foregoing remarks, the Applicants respectfully submit that the pending claims are in condition for allowance. Applicant hereby petitions for a 3-month extension of time with the requisite fee, authorization for a credit card payment of the filing fee is submitted herewith. The Commissioner is authorized to charge any additional fees or credit overpayments to Deposit Account No. 50-0311, Reference No. 37610-523N01US. If there are any questions regarding these amendments and remarks, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

Date: July 27, 2009


James S. Nolan, Reg. No. 53,393,
on behalf of: Fred C. Hernandez (Reg. No. 41,832)
Attorney/Agent for Applicants

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
3580 Carmel Mountain Road, Suite 300
San Diego, CA 92130
Telephone: (858) 314-1500
Fax: (858) 314-1501
Email: fhernandez@mintz.com
PTO Customer Number 64046